90-714



No.

**In The**
**Supreme Court of the United States**
**October Term, 1990**

**RITAELLEN M. MURPHY**, et al.,

Petitioners,

vs.

**RICHARD M. RAGSDALE, M.D.**, et al.,

Respondents.

**Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals for the Seventh Circuit**

# APPENDIX TO CERTIORARI PETITION

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**In The**
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**RICHARD M. RAGSDALE, M.D.**, etc., et al.,
Respondents-Plaintiffs-Appellees,

and

**RITAELLEN M. MURPHY**, et al.,
Petitioners-Plaintiffs-Appellants,

vs.

**BERNOCK J. TURNOCK, M.D.**, etc., et al.,
Respondents-Defendants-Appellees,

and

**KENNETH M. REED**, et al.,
Petitioners-Proposed Intervenors-Appellants.

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**Petition for Writ of Certiorari Before Judgment**
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# APPENDIX TO CERTIORARI PETITION

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# APPENDIX A

(Entered March 5, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, ey al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

## ORDER

Court denies Petition to Intervene and to maintain Class Action of Baby Reed and Baby Aughenbaugh but grants Kenneth Reed and Mark Aughenbaugh leave to appear as Amicus Curiae and grants Craig H. Greenwood leave to file his appearance as their counsel, nunc pro tunc to February 22, 1990.

ENTER: /s/ John A. Nordberg
United States District Judge

Dated: March 5, 1990

# APPENDIX B

(Entered March 22, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

## MEMORANDUM OPINION AND ORDER

Before the court is the parties' joint motion under Rule 23(e) of the Federal Rules of Civil Procedure for approval of a proposed settlement and consent decree. For the reasons stated below, the court grants the motion and enters the consent decree.

## BACKGROUND

Plaintiffs brought this action on June 28, 1985, seeking declaratory and injunctive relief from the enforcement of portions of three Illinois statutes, the Medical Practice Act, Ill. Rev. Stat. ch. 111, Sections 4433(1)(a)-(e) (later recodified as Sections 4400-22 (1) (a) - (e)), the Ambulatory Surgical

Treatment Center Act, Ill. Rev. Stat. ch. 111 1/2, Sections 157-8.1 et seq., and regulations promulgated thereunder, and the Health Facilities Planning Act, Ill. Rev. Stat. ch. 111 1/2, Sections 1152 et seq.

Plaintiffs challenged the constitutionality of these statutes and regulations, contending that they form a scheme which in effect requires all abortions to be performed in a hospital or its functional equivalent. Plaintiffs charged that this scheme violated the equal protection rights of Illinois physicians who perform or desire to perform abortions, and the privacy rights of Illinois women who desire or may desire to obtain an abortion. This court agreed, and on November 27, 1985, granted plaintiffs' motion for preliminary injunction.[1] On March 10, 1988, the United States Court of Appeals for the Seventh Circuit upheld the injunction, except for one portion which it vacated as moot.[2]

Defendants filed a Notice of Appeal, seeking review by the United States Supreme Court. On July 3, 1989, the Supreme Court entered an order accepting the case for oral argument but postponing the question of jurisdiction until the hearing on the merits. Before the date scheduled for oral argument, the parties negotiated the proposed consent decree now before this court. The decree seeks to resolve all claims for declaratory and injunctive relief brought by plaintiffs and reserves their claim for attorney's fees, costs and expenses. On December 1, 1989, the Supreme Court granted the parties' joint motion to defer proceedings there pending this court's decision to approve or disapprove the proposed decree.

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[1]The court's opinion is published at 625 F. Supp. 1212 (N.D. Ill. 1985).

[2]The decision of the Court of Appeals is published at 841 F.2d 1358 (7th Cir. 1988).

Following the Supreme Court's order, the parties gave notice of the proposed settlement to the plaintiff and defendant classes, with this court's approval.[3] The court allowed any class members objecting to the proposed settlement to file submissions by February 9, 1990, with responses due the following week. During this period, the court received 326 telephone calls, two telegrams, and 1,266 letters. The court read every single letter in its entirety.

On February 23, 1990, the court conducted a hearing to assess the fairness of the proposed settlement. The parties explained their reasons for negotiating the settlement; afterward, the court heard objections from amici who had filed briefs with the court.[4] Finally, the court permitted

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[3]The parties gave notice by mail to all facilities which, at the time the complaint was filed, were licensed ASTCs (Ambulatory Surgical Treatment Centers) and offered abortions; by publication in the Chicago Tribune and the Chicago Sun-Times to all presently licensed ASTCs which offer abortions; and by mail to all members of the defendant class of state's attorneys. All methods of notice were completed by January 29, 1990.

As required, the notice also informed class members of the fairness hearing to be conducted on February 23, 1990. For this and other aspects of the settlement process, the court was guided by the procedures set forth in the Manual for Complex Litigation, Second, Sections 30.4-30.47 (1985).

[4]Among the amici were certain members of the Illinois General Assembly and an individual attorney from Chicago. There were other objectors who filed materials with the court, but did not style themselves "amici." The court heard their comments as well. The court also heard objections from some of the state's attorneys of the defendant class, who had submitted briefs to the court.

Two objectors, Kenneth M. Reed and Mark I. Aughenbaugh, sought leave to intervene on behalf of "a class consisting of all Illinois unborn babies." Any interest in protecting the fetus is for the state to assert, however. The objectors brought no evidence showing "gross negligence or bad faith" committed by the state in representing the interests implicated by this litigation. Without such a showing, the state's

individuals attending the hearing — who filled the largest courtroom in the courthouse — to express their views if they wished. After reviewing the prior findings of fact and conclusions of law issued by this court, reviewing the opinion of the Seventh Circuit Court of Appeals and the applicable decisions of the United States Supreme Court, examining the briefs filed by the parties and objectors, and hearing and considering all of the written and oral presentations made in connection with the fairness hearing[5], the court makes the following findings of fact and conclusions of law.

## DISCUSSION

In deciding whether to approve a proposed consent decree, "a district court must determine whether [it] is lawful, fair, reasonable, and adequate." E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d 884, 889 (7th Cir. 1985). The court does not draw on a clean slate, however. Deference must be given to the settlement, since it embodies a negotiated compromise between the parties. A district court should

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representation must be presumed adequate. United States v. South Bend Community School Corporation, 692 F.2d 623 (7th Cir. 1982). Accordingly, the court denied the objectors' petition but granted leave to file written objections and appear as amici, which they did. Their Petition to Reconsider Petition to Intervene and to Maintain Class Action of Baby Reed and Baby Aughenbaugh, filed March 15, 1990, is likewise denied. See United States v. City of Chicago, 897 F.2d 243 (7th Cir. 1990) ("intervention to take an appeal is permissible only if the original parties' decision to discontinue the battle reflects gross negligence or bad faith").

[5]One notable submission to the court is the Draft Order Approving and Entering Consent Decree, filed jointly by plaintiffs and defendants on March 16, 1990. It reflects the parties' stipulations as to findings of fact and conclusions of law in this case. As such it can more properly be characterized as a Stipulation, which is how the court will hereinafter refer to it. While declining to incorporate the entire Stipulation into this opinion, the court enters it into the record as evidence to be weighed in evaluating the proposed consent decree.

therefore "be chary of disapproving a consent decree." Id., p. 890. Indeed, the court "may not deny approval of a consent decree unless it is unfair, unreasonable, or inadequate." Id., p. 889.

The consent decree proposed here enjoins the enforcement of certain statutory provisions challenged by plaintiffs. Foremost among them are Section 157-8.3(A) of the ASTCA, defining any facility in which a medical or surgical procedure is utilized to terminate a pregnancy as an "Ambulatory Surgical Treatment Center"; and a host of regulations requiring ASTCs to comport with physical plant specifications and other restrictions which "in effect...require ASTCs to be the functional equivalent of small hospitals."[6] It was this statutory scheme that plaintiffs regarded as infringing on the constitutional right of women to have an abortion, a view shared by this court and the Court of Appeals.

The consent decree introduces a new scheme which identifies two types of surgical facilities: those that perform abortions beyond 18 weeks gestational age, or with general, epidural, or spinal anesthesia, or with incisions exposing the patient to a risk of infection; and those that perform abortions within 18 weeks gestational age, under local anesthesia. The former are made subject to a panoply of licensing provisions under the ASTCA and Health Facilities Planning Act. The latter, while still obliged to obtain a license, are

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[6]Ragsdale v. Turnock, 625 F. Supp. at 1216. Together with the appellate court's opinion, that decision contains exhaustive discussions of the statutes in question and plaintiffs' challenge to them. The court's task here is not to rehash that material, but rather to ask whether the proposed consent decree fairly addresses the concerns expressed on both sides of the dispute. Since the findings of fact set forth in the Ragsdale decisions are relevant to that inquiry, the court incorporates them in today's opinion.

required to comply with a new set of regulations tailored to those facilities.[7]

This scheme is neither unfair, unreasonable, or inadequate. As counsel for both parties noted during the fairness hearing, the settlement addresses each side's principal concern. To plaintiffs' satisfaction, the decree preserves their constitutional right to have or provide abortions; to defendants' satisfaction, it permits the Department of Public Health to regulate outpatient clinics devoted to abortions and abortion-related procedures. The decree reflects "the essence of settlement," which is "compromise...Each side gains the benefit of immediate resolution of the litigation and some measure of vindication for its position while foregoing the opportunity to achieve an unmitigated victory." Hiram Walker, 768 F.2d at 889.

Various objectors insist that the proposed consent decree compromises too much. Family Planning Associates Medical Group (FPA), a major provider of abortion services in Chicago and elsewhere, objects to the provision that subjects an abortion-only surgical facility to full ASTC regulatory requirements if it uses general anesthesia. "That provision," says FPA, "permits the imposition of burdensome and medically unnecessary regulations that would impermissibly infringe on the rights of the physician class to provide abortion services..." FPA brief, p. 2.

FPA's argument is unavailing. General anesthesia is more hazardous than local anesthesia, a fact to which Doctors Ragsdale and Hern, plaintiff and plaintiffs' expert,

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[7]The decree does not require a separate license for physicians whose offices are not primarily devoted to providing surgical services, and it does not affect the provision of abortions in hospitals.

respectively, testified. State Defendants' Response, p. 8. Indeed, the Abortion Standards and Guidelines of Planned Parenthood Federation of America, Inc. provide that "[g]eneral anesthesia may not be used in out-of-hospital settings." Id. In view of this distinction between local and general anesthesia, the court cannot conclude that the provision challenged by FPA renders the settlement unfair or unreasonable.

Equally unavailing are suggestions by a number of objectors that Webster v. Reproductive Health Services, Inc., __U.S.__, 109 S.Ct. 3040 (1989), requires disapproval of the settlement. Webster concerned the use of public facilities and employees to perform abortions, the use of public funding for abortion counseling, and viability testing at 20 weeks gestation. These issues are not involved here. As the state defendants properly observe, "[t]he Webster decision did not provide any definitive pronouncements for purposes of this litigation and did not overrule the previous relevant Supreme Court decisions." State Defendants' Response, p. 9.

Similarly, mere speculation that the Supreme Court might uphold the provisions challenged here in light of Webster will not invalidate the consent decree.[8] In deciding whether to approve a settlement, "[t]he district court should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." Hiram Walker, 768 F.2d at 889. Settlement proceedings are not an appropriate occasion for resolving the merits of undecided legal issues. The court declines the in-

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[8]To say the Supreme Court might uphold the challenged provisions is doubly speculative. Not only is the substantive law unsettled, but the Court reserved the issue of jurisdiction and may not have reached the merits in this case.

vitation of some objectors to do so.

Other objectors insist that the consent decree endangers the health and safety of women seeking abortions. There is no evidence to support this contention. To the contrary, in their briefs and at the fairness hearing, counsel for both parties made clear what their intentions were during settlement negotiations: to assure safe and sanitary conditions for abortion procedures while permitting women the opportunity to exercise their constitutional rights. Toward that end, the parties consulted with obstetricians, gynecologists, and other medical and public health experts in drafting the terms of the settlement.[9]

Far from leaving women unprotected, the settlement creates a network of statutes and rules regulating the provision of abortion services. Facilities that provide abortions beyond 18 weeks gestational age or use general anesthesia must comply with the Ambulatory Surgical Treatment Center Licensing Requirements. Facilities that offer abortion services within 18 weeks gestational age, using local anesthesia, must abide by the requirements set forth under subpart G of the ASTCA, "Limited Procedure Specialty Centers." Like any other provider of medical services, abortion providers must comply with standards of conduct generally applicable to the medical profession.[10] Finally, the Clinical

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[9]Among those consulted were the American College of Obstetricians and Gynecologists, Planned Parenthood Federation of America, the National Abortion Federation, and other professional societies. The parties also reviewed Williams Obstetrics and other respected medical texts and publications. Stipulation, p. 18.

[10]Some objectors complain that the decree puts physicians wholly outside the regulatory powers of the state, but that objection misses the mark. No less than the clinics regulated by the ASTCA, physicians may not violate accepted standards of medical practice when performing abor-

Laboratory Act — and any other present or future legislation not contrary to the consent decree — may be applied to providers of abortion services.[11]

Taken together, these statutes and regulations provide the state with ample authority to safeguard the health and safety of women seeking abortions. That is certainly the view of the Department of Public Health, which is charged with regulating health care in the State of Illinois: "it is the judgment of the medical doctors with the Department of Public Health that the remaining regulations provide a sufficient mechanism by which the Department can regulate and inspect these facilities in order to minimize the risk of harm to patients undergoing surgery at these facilities. This judgment, as well as the goal of regaining regulatory authority is consistent with the stated purpose of the ASTC Act to promote safe and adequate treatment.'" State Defendants' Response, p. 7 (citation omitted).

There remain two objections to the proposed consent decree worth discussing. A handful of state's attorneys contend that the defendant class to which they belong was not adequately represented during settlement negotiations. In support of this charge, the objectors refer obliquely to "information" culled from their review of the settlement proceedings which they regard as evidence of inadequate representation. They consider the behavior of their class

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tions.

Moreover, the decree leaves the Legislature free to amend the Medical Practice Act or to enact legislation specifically regulating physicians' offices.

[11]The consent decree does not, as some objectors contend, purport to bind future actions of the General Assembly. The decree specifically applies only to the challenged statutes as presently enacted. If those statutes are amended or new statutes passed, the decree does not affect their enforcement.

representative so suspect that, even if it does not require rejection of the proposed settlement, it warrants further discovery.

Their charge is without merit. On November 8, 1989, this court ordered the State's Attorney of Cook County, or his representative, to participate in settlement negotiations. Assistant State's Attorney Harold E. McKee, III, was assigned to the case. At the fairness hearing, plaintiffs and defendants alike attested to the vigor and frequency of Mr. McKee's participation in the negotiations. He "attend[ed] and participate[d] in all settlement negotiations...participated in drafting the proposed settlement and consent decree, represented the class interest in maintaining the ability to prosecute future violations under the settled acts, and also participated in the briefings held for the benefit of the news media..." State's Attorney Partee's Response, p. 4. The court finds his representation adequate and denies the Motion for Leave to Take Discovery brought by Dennis Schumacher, Greg McClintock, Samuel Naylor, and Stephen L. Reed, state's attorneys for Ogle, Warren, Hancock, and Henderson counties, respectively.

Finally, some objectors challenge the consent decree because it would expose defendants to a claim for attorney's fees. But the consent decree expressly reserves the issue of attorney's fees for resolution at a later date:

> The plaintiffs' entitlement to, and the amount of, any counsel fees and reimbursement of disbursements and expenses to be paid by the defendants shall be determined by the District Court upon proper application by the plaintiffs after the entry of the Consent Decree and final judgment.

Settlement Agreement, p. 5. Any objections regarding fees made at this time are premature.

The parties' Stipulation discusses this and nearly every other aspect of these settlement proceedings. Although far too detailed for full discussion here, some elements of the Stipulation deserve mention. Beginning with page 7, for instance, the Stipulation comprehensively reviews the procedural history behind the consent decree. The court incorporates that review in this opinion. Further, the Stipulation identifies several factors which may be used to decide whether a settlement is fair, including the strength of plaintiffs' case versus the settlement offer; the complexity and expense of further litigation; the reaction of class members to the settlement; the opinion of competent counsel; and the stage of proceedings and amount of discovery completed. Stipulation, p. 27.

Without launching into full analysis of these factors here, the court notes that it considered them all in reaching its holding today. The consent decree offers plaintiffs, by their own admission, "permanent injunctive relief similar...to that which they sought in this litigation..." (Stipulation, p. 28); further litigation could prove lengthy and expensive; few class members objected to the settlement; counsel were clearly well-informed and represented their clients zealously; and the settlement agreement arose late in the proceedings, after thorough discovery had been completed. These and other factors considered by the court are more fully explained by the parties in the Stipulation.

For the foregoing reasons, the court finds the proposed consent decree lawful, fair, reasonable, and adequate. Accordingly, the court grants the parties' joint motion for approval of the settlement, and enters the consent decree herewith.

ENTER: /s/ John A. Nordberg
United States District Judge

Dated: March 22, 1990

## CONSENT DECREE

## I. HISTORY OF THE LITIGATION

This class action litigation was commenced as a civil rights case on June 28, 1985, by named Plaintiffs Richard M. Ragsdale, M.D., Margaret Moe, R.N., the Northern Illinois Women's Center, Sarah Roe and Jane Doe, under 42 U.S.C. sections 1983 and 1988, and 28 U.S.C. sections 2201 et seq. Plaintiffs claimed that the challenged Illinois statutes and regulations, which included (1) the Medical Practice Act, ("MPA") Ill. Rev. Stat. ch. 111 section 4433 (a)-(e) (since recodified at Ill Rev. Stat. ch. 111 section 4400-22(1)), (2) the Ambulatory Surgical Treatment Center Act ("ASTC Act"), Ill. Rev. Stat. ch. 111 1/2 sections 157-8.1 to 157-8.16 and regulations promulgated thereunder, and (3) the Health Facilities Planning Act ("HFP Act"), Ill. Rev. Stat. ch. 111 1/2 sections 1151 to 1168, impermissibly restricted the performance of first and second trimester abortions and thus allegedly violated rights secured by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

### A. Parties

#### 1. Plaintiffs

Plaintiff Richard M. Ragsdale, M.D., is a physician, licensed to practice in Illinois, who is the Director of the Northern Illinois Women's Center. At the time the complaint was filed and at the present, Dr. Ragsdale performs abortions for his women patients who seek such medical

care. Plaintiff Margaret Moe is a registered nurse and the sole owner and executive director of a medical facility in Cook County, Illinois. Ms. Moe employs licensed physicians and she sought to offer abortion services at her facility. Plaintiffs Sarah Roe and Jane Doe are patients of Dr. Ragsdale who had sought and received an abortion from Dr. Ragsdale and who may need or desire another abortion in the future.

The named plaintiffs brought this lawsuit on their own behalf, on behalf of a class of physicians who perform or desire to perform abortions in the State of Illinois, and on behalf of a class of Illinois women who desire abortion services. In orders issued on November 27, 1985 and on December 11, 1985, this Court certified the following plaintiff classes pursuant to Rule 23(b) of the Federal Rules of Civil Procedure:

> (a) A plaintiff class consisting of all physicians and surgeons who perform or desire to perform abortions in the State of Illinois; [and]
>
> (b) A plaintiff class consisting of all Illinois women of child-bearing age who desire or may desire an abortion sometime in the future[.]

**2. Defendants**

Defendant Bernard J. Turnock, M.D., is the Director of the Department of Public Health of the State of Illinois and was sued in his official capacity. He is responsible for the enforcement of the ASTC Act and for the promulgation and enforcement of regulations under that Act, and has certain administrative responsibilities under the HFP Act.

Defendant Neil F. Hartigan, Attorney General of the State of Illinois, was sued in his official capacity, in which he is charged with the defense of challenges to the MPA, the ASTC Act and the HFP Act, and their respective regulations, throughout the State of Illinois. In addition, as chief legal officer of the state, the Attorney General represents the directors of state agencies in their enforcement activities, and upon referral by these agencies, has certain enforcement responsibilities on behalf of these agencies.

Defendant Gary L. Clayton was sued in his official capacity as the Director of the Illinois Department of Registration and Education. As such Mr. Clayton, and his successor in office at the successor agency, Robert C. Thompson, the Acting Director of the Department of Professional Regulation, is empowered to implement, administer, and enforce the MPA.

Defendant Richard M. Daley was sued in his official capacity as State's Attorney of Cook County, and as the representative of the defendant class of all state's attorneys of the 102 counties of the State of Illinois. Under the ASTC Act, the Director of the Department of Public Health may, through the State's Attorney of the county in which the violation occurs, seek injunctions to restrain violations of the ASTC Act or its regulations, or enjoin future operation of any ambulatory surgical treatment center ("ASTC") violating the ASTC Act or its regulations. Under the HFP Act, state's attorneys may prosecute persons in violation of the Act for committing a business offense.

In orders issued on November 27, 1985 and on December 11, 1985, this Court certified the following defendant class pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure:

"A defendant class consisting of all State's Attorneys in the State of Illinois."

Richard M. Daley, as the State's Attorney of Cook County, was named as representative of this defendant class. Richard M. Daley has been succeeded in office by Cecil A. Partee, who pursuant to Rule 25(d), F.R.Civ.P., has been automatically substituted as the named defendant state's attorney and as representative of the defendant class of state's attorneys.

**B. Jurisdiction**

This Court concludes that it has jurisdiction of this action under 28 U.S.C. section 1343. Venue is proper in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. section 1391.

**C. The Claims**

In their Complaint, plaintiffs alleged that the challenged statutes and regulations impermissibly restricted the ability of physicians to perform and the ability of women to secure first and second trimester abortions. Plaintiffs claimed that the laws singled out abortions for a discriminatory level of regulation and, further, required that all abortions performed in Illinois be performed in a hospital, or its functional equivalent—an ASTC. Plaintiffs thus alleged that the laws violated plaintiffs' right of privacy as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution and the penumbra of the Bill of Rights. Plaintiffs also alleged that the challenged provisions deprived Dr. Ragsdale and other physicians of their asserted right to practice medicine free from vague, arbitrary, irrational and burdensome regulations, in violation of the equal protection clause of the Fourteenth Amendments to the Uni-

ted States Constitution, and that the provisions similarly prevented Margaret Moe from operating her facility free from vague, arbitrary, irrational and burdensome regulations, in violation of the equal protection clause of the Fourteenth Amendment. Plaintiffs sought declaratory and injunctive relief from the enforcement of the challenged provisions.

Defendants filed an Answer which denied each and every allegation of the Complaint, except as otherwise responded to. Defendants specifically denied each and every allegation that the laws, as written or as enforced, violated any of plaintiffs' rights guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Defendants argued that the challenged statutes and regulations reflected accepted medical, health, safety, and construction standards for outpatient surgical facilities. In addition, defendants contended that the challenged provisions appropriately furthered the State's interests in protecting the health, safety and welfare of women who choose to have abortions in such facilities.

**D. The Preliminary Injunction**

Following an evidentiary hearing and a review of the pleadings and other written evidence submitted by the parties, this Court granted plaintiffs' Motion for a Preliminary Injunction in orders issued on November 27, 1985 and on December 11, 1985. The Court enjoined the defendant class members and the individual defendants Bernard J. Turnock, Neil F. Hartigan, and Gary Clayton (hereafter collectively referred to as "defendants"), in their official capacities, and defendants' successors, officers, agents, servants, employees and attorneys and those persons in active concert or participation with them, from enforcing section 4433 (1) (a)-(e) (now section 22 (1) (a)-(e)) of the MPA, the

ASTC Act and any rules and regulations promulgated thereunder, or the HFP Act, against any person or facility to the extent such person or facility offers or performs, or desires to offer or perform first or early second trimester abortions or other abortion-related gynecological procedures, such as a dilation and curettage.

On March 10, 1988, the United States Court of Appeals for the Seventh Circuit upheld the Preliminary Injunction, except insofar as the challenge to one provision was determined to be moot. The Court of Appeals subsequently denied defendants' petition for rehearing and suggestion for rehearing en banc on August 12, 1988.

Thereafter, defendants Turnock, Hartigan, and Stephen Selcke, then-director of the Department of Professional Regulation and successor to defendant Clayton, filed a Notice of Appeal, seeking review by the Supreme Court of the United States.

## II. RESOLUTION OF DISPUTED ISSUES

This Consent Decree is the result of negotiation and settlement. Defendants deny the allegations in the Complaint and specifically deny that the challenged provisions and their enforcement of them violates the constitutional or other legal rights of the plaintiff classes. Nothing herein shall be considered an admission of fault of any kind by the defendants, nor shall anything herein be considered a reflection of any weakness of proof by the plaintiffs.

The parties are desirous of avoiding further protracted and costly litigation and therefore have agreed that this controversy should by resolved by settlement and without further evidentiary hearings. In addition, the defendants desire to expeditiously regain the State's authority to license

and regulate outpatient surgical facilities in which abortions are performed and to implement and enforce regulations as to such facilities. Accordingly, as indicated by the signatures below, the parties have agreed to the entry of this Consent Decree.

This Consent Decree and judgment shall constitute a final resolution of all of the claims for declaratory and injunctive' relief asserted in the complaint, with the reservation of plaintiffs' claims for attorney's fees, costs, and expenses, and shall be binding upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them, including: the defendants, their agents and employees, and their successors in office, the defendant class of state's attorneys, and upon the named plaintiffs and all persons in the classes they represent. The plaintiffs' entitlement to, and the amount of, any counsel fees and reimbursement of costs and expenses shall be determined by the Court upon proper application by the plaintiffs after entry of this Decree. Defendants retain their right to object to such application submitted by plaintiffs. The parties also may resolve the plaintiffs' claim to fees, costs and expenses by agreement.

Plaintiffs and defendants agree to the dissolution of the Preliminary Injunction and to the entry of this Consent Decree as a Permanent Injunction.

## III. FINDING OF FAIRNESS AND ADEQUACY

The Court, having held a hearing pursuant to court-ordered notice to the plaintiff and defendant classes in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, hereby finds that the terms of this Consent Decree provide for a fair, adequate, and reasonable settle-

ment of the claims for declaratory and injunctive relief asserted in the complaint, with the exception of plaintiffs' claims for attorney's fees, costs and expenses. The Court thereby dissolves the Preliminary Injunction and enters this Consent Decree as a Permanent Injunction, the injunctive terms of which are set forth in section IV.

## IV. JUDGMENT AND PERMANENT INJUNCTION

NOW, THEREFORE, upon the consent of the parties and approval of this Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

[SEE ATTACHMENT A FOR THE INJUNCTIVE PORTION OF THIS CONSENT DECREE]

## V. COMPLIANCE

Class members shall be given at least 6 months from the date of approval of this Consent Decree to bring their facility into compliance with the terms of the Consent Decree or any new regulations promulgated by the Department of Health, pursuant to this decree, governing the provision of abortion services.

ORDERED THIS 22 day of March, 1990.

ENTER:/s/ John A. Nordberg
United States District Judge

Approved:

One of the Attorneys for
the Plaintiff Class:
/s/ Colleen K. Connell

Bernard J. Turnock, M.D.,
Director, Illinois
Department of Public Health

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Defendant Neil F. Hartigan
Attorney General of Illinois

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One of the Attorneys for
Cecil A. Partee State's Attorney
of Cook County and the defendant
class of State's Attorneys

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Kevin K. Wright,
Director, Illinois
Department of Professional
Regulation

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**ATTACHMENT A**

**INJUNCTION PORTION OF CONSENT DECREE**

1. Defendants, in their official capacities, their successors in office, their officers, agents, servants, contractors, employees and attorneys, and those people in active concert and participation with them, are hereby enjoined from initiating any prosecution, including but not limited to criminal, civil and administrative proceedings, or imposing any sanction for violation of, or enforcing in any way, any of the statutes set forth in subparagraphs (A) and (B) below against any person or facility offering or performing abortions:

A. Section 157-8.3(A) (section 3) of the Ambulatory Surgical Treatment Center Act ("ASTC Act"), Ill. Rev. Stat. ch. 111-1/2, pars. 157-8.3(A), to the extent that Ambulatory Surgical Treatment Center is defined as any facility in which a medical or surgical procedure is utilized to terminate a pregnancy.

B. Section 22(1)(a)-(e) of the Medical Practice Act. Ill. Rev. Stat. ch. 111.

2. Defendants, in their official capacities, their successors in office, their officers, agents, servants, contractors, employees and attorneys. and those people in active concert and participation with them, are hereby enjoined from initiating any prosecution, including but not limited to criminal, civil and administrative proceedings, or imposing any sanction for violation of, or enforcing in any way, against any licensed Ambulatory Surgical Treatment Center ("ASTC"), the following provisions of the Ambulatory Surgical Treatment Center Licensing Requirements, 77 Ill. Admin. Code, Section 205, subchap. b: (1) 205.710, (2) 205.720, (3) 205.730(a)(3) and (b), (4) 205.740, and (5) 205.760, and, if such facility provides only abortions and related gynecological procedures, (6) 205.120(b)(5)-(7), and (7) 205.125(b)(5)-(7), to the extent that, provided that all information required under said sections is maintained at the ASTC, the application required by said sections need only include the name, address or telephone number of the owner(s), administrator(s) and medical director(s) of the ASTC.

3. Defendants, in their official capacities, their successors in office, their officers, agents, servants, contractors, employees and attorneys, and those people in active concert and participation with them, are hereby enjoined from initiating any prosecution, including but not limited to cri-

minal, civil and administrative proceedings, or imposing any sanction for violation of, or enforcing in any way, any of the statutes or regulations set forth in subparagraphs (A) and (B) below against any person or facility offering or performing abortions within 18 weeks assessed gestational age, with only local, and not general, epidural, or spinal anesthesia, without incisions or other techniques which expose a person to risk of infection from airborne bacteria, and gynecological procedures related to such abortions, in an ASTC whose surgical procedures are limited to the performance of such abortions and gynecological procedures related to such abortions:

A. Sections 1152-1168 of the Health Facilities Planning Act, Ill. Rev. Stat. ch. 111-1/2, pars. 1152-1168.

B. The following provisions of the Ambulatory Surgical Treatment Center Licensing Requirements, 77 Ill. Admin. Code, Section 205, subchap. b:

(1) 205.120(b)(5)-(7) - Licensure, enjoined to the extent that, provided that all information required under said section is maintained at the ASTC, the application need only include the name, address or telephone number of the owner(s), administrator(s) and medical director(s) of the ASTC.

(2) 205.125(b)(5)-(7) - Application for License Renewal, enjoined to the extent that, provided that all information required under said section is maintained at the ASTC, the application need only include the name, address or telephone number of the owner(s), administrator(s) and medical director(s) of the ASTC.

(3) 205.520(c) - Preoperative Care, enjoined to the extent said section requires tests to be performed by a quali-

fied laboratory technician. (Relevant legal requirements regarding laboratory tests are found in the Clinical Laboratory Act, Ill. Rev. Stat. ch. 111-1/2, Sections 621-103 et seq.)

(4) 205.330 - Nursing Personnel, enjoined to the extent that "surgical experience" as used in said section may be interpreted to exclude experience gained in a clinical facility providing abortion procedures.

(5) 205.410(c) - Equipment, enjoined to the extent that said section requires an ASTC that does not use inhalation anesthetic or medical gas to have written procedures to insure the safety in use or storage of such substances, provided that if intravenous sedation is used in accordance with the ASTC's program narrative, mechanical ventilation devices and intubation equipment must be available on site.

(6) 205.540(c)(1)-(3) - Post Operative Care, enjoined to the extent the requirements of said section would apply in circumstances where (1) no licensed hossital within 15 minutes from the ASTC ("nearby hospital") will allow admitting or practice privileges to abortion providers and (2) either the ASTC has a transfer agreement with a nearby hospital, or a physician practicing at the ASTC or the medical director of the ASTC has a professional working relationship or agreement, maintained in writing at the ASTC and verifiable by IDPH, with a physician who does have admitting or practice privileges at a nearby hospital, so as to assure availability of patient care in the event of medical complications ensuing from an abortion or a gynecological procedure related to an abortion.

(7) 205.710 - Abortions, enjoined.

(8) 205.720 - Personnel, enjoined.

(9) 205.730 - General Patient Care, 730(a)(1), enjoined to the extent that said section requires any examination beyond a determination of the patient's blood Rh factor; 730(a)(3), enjoined; and 730(b), enjoined.

(10) 205.740 - Pre-operative Requirements, enjoined.

(11) 205.760 - Reports, enjoined.

(12) 205.1310(a) - Plant and Service Requirements, enjoined to the extent that said section requires that a proposed ASTC meet any requirements enjoined or not permitted pursuant to the provisions of this decree.

(13) 205.1320 (a)(l) - General Considerations, enjoined to the extent that said section requires any physical marking that denotes the facility as an ASTC.

(14) 205.1350 - Admission Department and Public Areas, enjoined, provided that the ASTC complies with all applicable federal and state handicap access laws, including, without limitation, the Illinois Environmental Barriers Act, Ill. Rev. Stat. ch. 111-1/2, Section 3711.

(15) 205.1360 - Clinical Facilities, 1360(a)(l) [examination room], enjoined to the extent said section would require that the examination room (which need not be separate from the procedure room) be larger than minimally adequate to accommodate the equipment required for the examination, to facilitate the examination safely, and to allow unobstructed ingress and egress to and from the room through the door that, if locked, can be opened from within the room;

.1360(b)(l) [procedure room], enjoined to the extent said sec-

tion would require a room larger than 120 square feet with a minimum dimension of at least 10 feet unless the ASTC demonstrates that a smaller room size is minimally adequate to accommodate all equipment required for the procedures, to perform the procedures safely, and to protect patients and staff in the event of fire or other emergency;

.1360(b)(2) [communication system], enjoined;

.1360(c)(2) [recovery room], enjoined to the extent said section would require a room larger than is necessary to accommodate the recovery beds or lounge chairs in the room, with a minimum of three feet between each bed or chair and an unobstructed passageway of a minimum of four feet clearance at one end each bed or chair;

.1360(c)(3) [drug distribution station, hand washing facility, charting facility, nurses' station and storage space for supplies and equipment], enjoined except that the ASTC must provide for direct visual supervision of the patients' recovery area;

.1360(c)(4) [toilet specifications], enjoined to the extent said section would require the inclusion of a toilet, a gray diverter valve or a fluid waste disposal in the recovery room if a toilet is reserved for only patient use and does not require recovery room patients to enter public areas or other patient care areas to access the toilet; and

.1360(c)(7) [minimum of four recovery beds or lounge chairs], enjoined to the extent said section would require the inclusion of more than three recovery beds or lounge chairs for each procedure room unless the ASTC's narrative program provides that no more than two Procedures per hour will be performed per procedure room, in which case a minimum of two recovery beds or lounge chairs for each procedure

room is required.

(16) 205.1370 - Support Services,

.1370(a) [control station], enjoined;

.1370(d) [scrub stations], enjoined to the extent said section requires a separate scrub station outside of the procedure room, provided that the procedure room contains a sink with handwashing capabilities;

.1370(e) [soiled workroom], enjoined to the extent that the section requires more than closed clean storage which prevents contamination by soiled materials and for separate storage and handling of soiled materials;

.1370(f) [fluid waste disposal], enjoined to the extent said section requires more than a toilet with a gray diverter valve, a sink exclusively used for fluid waste disposal, or a separate fluid waste disposal unit;

.1370(g) [workroom or supply room], enjoined to the extent said section requires more than facilities for closed clean storage;

.1370(h) [anesthesia storage], enjoined;

.1370(i) [medical gas storage], enjoined;

.1370(k) [changing areas -- staff], enjoined to the extent that the section requires more than minimally adequate space for any changing or gowning required by the specific procedures that are being performed in accordance with the ASTC's narrative program;

.1370(1) [changing areas -- patients], enjoined; and

.1370(n) [janitor's closet], enjoined to the extent that the section requires more than minimally adequate space for storage of cleaning supplies.

(17) 205.1380(b)(3) and (4) - Diagnostic Facilities, enjoined.

(18) 205.1400 - Details and Finishes,

.1400(a)(1) [minimum corridor width], enjoined to the extent said section would require that the width of corridors in an ASTC exceed five feet;

.1400(b)(3) [minimum door width], enjoined to the extent said section would require that the width of any doors in an ASTC exceed three feet;

.1400(d) [thresholds flush], enjoined, provided that the ASTC complies with all applicable federal and state handicap access laws, including, without limitation, the Illinois Environmental Barriers Act, Ill. Rev. Stat. ch. 111-1/2 Section 3711;

.1400(n) [ceiling .finish], enjoined to the extent said section requires ceilings to be readily washable and without crevices, if ceilings are otherwise cleanable;

(19) 205.1410(d)(1) - Construction, Including Fire-Resistive Requirements, enjoined, provided that the ASTC complies with all applicable federal and state handicap access laws, including, without limitation, the Illinois Environmental Barriers Act, Ill. Rev. Stat. ch. 111-1/2 Section 3711.

(20) 205.1540(a)-(q) and Table A = Air conditioning, Heating and Ventilating Systems, enjoined to the extent

that said section requires more than that temperature be maintained between 68° and 80° Fahrenheit.

(21) 205.1750(b) - Receptacles, enjoined.

4. Following the entry of the Consent Decree, (1) defendants may enforce those specific portions of the Medical Practice Act ("MPA"), the Health Facilities Planning Act ("HFPA"), and the Ambulatory Surgical Treatment Center Act ("ASTCA") not enjoined herein; (2) defendants shall not enforce Section 22(1)(a)-(e) of the MPA as presently codified; (3) defendants' enforcement and non-enforcement of Sections 1152-1168 of the HFPA as presently codified shall be consistent with the injunctions set forth in paragraphs 1 through 3 above; and (4) defendants' future regulation under and enforcement and non-enforcement of the present provisions of the ASTCA shall be consistent with the injunctions and specifications in paragraphs 1 through 3 above, and further shall be limited as follows:

(A) With respect to any person or facility that offers or performs abortions in any ASTC described in paragraphs 2 and 3 above, defendants may promulgate and enforce regulations implementing the requirements of paragraphs 2 and 3 above ("implementing regulations");

(B) With respect to any person or facility that offers or performs abortions in any ASTC described in paragraph 3 above, defendants may promulgate, implement and enforce future regulations under the ASTCA, which are different from and additional to the requirements in paragraph 3 and the implementing regulations ("paragraph 3 future regulations") only when a change in medical or scientific knowledge requires paragraph 3 future regulations in order to insure against a significant health or safety risk to the welfare of a woman undergoing an abortion as permitted in

such ASTC, and further provided that no paragraph 3 future regulations shall (i) restrict access to the procedure, either by materially increasing the cost of the procedure or materially reducing the number of facilities without resulting in more than a marginal increase in safety; (ii) interfere with the safety of the procedure as determined by accepted medical practice; or (iii) prevent a physician from exercising medical discretion, within accepted medical practice and within the scope of the facility, to provide a patient with appropriate care given the unique circumstances presented by her health situation; and

(C) With respect to any person or facility performing an abortion in any ASTC described in paragraph 2 above, defendants may promulgate, implement and enforce future regulations which govern all such ASTCs ("paragraph 2 future regulations"), however, if any paragraph 2 future regulations are specifically directed at the abortion procedure, as opposed to all procedures done in such facility, defendants may promulgate, implement and enforce such paragraph 2 regulations only when a change in medical or scientific knowledge requires paragraph 2 future regulations in order to insure against a significant health or safety risk to the welfare of a woman undergoing an abortion as permitted in such ASTC, and further provided that no paragraph 2 future regulations shall (i) restrict access to the procedure, either by materially increasing the cost of the procedure or materially reducing the number of facilities without resulting in more than a marginal increase in safety; (ii) interfere with the safety of the procedure as determined by accepted medical practice; or (iii) prevent a physician from exercising medical discretion, within accepted medical practice and within the scope of the facility to provide a patient with appropriate care given the unique circumstances presented by her health situation.

5. With respect to the number of weeks assessed gestational age set forth in paragraph 3 and 4 above, the parties stipulate that said figure has been determined by the Illinois Department of Public Health and is based on an assessment of risk to the health and safety of women as evidenced by available published data, present surgical and medical procedures commonly used and constituting acceptable medical practice, and the standards and guidelines of professional medical and health organizations. Following the entry of this Consent Decree, the plaintiffs and the Director of the IDPH expressly reserve the right to seek modification by the Court of said figure upon a showing that the further development of medical or scientific knowledge, including the basis of assessment set forth above, evidences that abortions and related gynecological procedures may be or should be performed within a different number of weeks in the facilities defined in paragraph 3, on the basis that such a change would not pose or will eliminate a significant risk to the health or safety of women obtaininq such services.

6. The Court retains jurisdiction to enforce compliance with the provisions of this Consent Decree.

* * *

## APPENDIX C

(Entered March 22, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

**JUDGMENT**

Judgment is entered as follows: Enter memorandum opinion and order finding the proposed consent decree lawful, fair, reasonable and adequate. Accordingly, the court grants the parties' joint motion for approval of the settlement, and enters the consent decree herewith. (For further detail see order attached to the original minute order form).

ENTER: /s/ John A. Nordberg
United States District Judge

Dated: March 22, 1990

## APPENDIX D

(Entered April 19, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

**ORDER**

Hearing held on Craig H. Greenwood, attorney for Ritaellen M. Murphy and Penny R. Greenwood's petition to clarify. Per oral ruling court denies Craig H. Greenwood's petition to file his appearance. Court supplements the memorandum opinion and order stating that additional time to February 13, 1990 was given to file objections.

ENTER: /s/ John A. Nordberg
United States District Judge

Dated: April 19, 1990

## APPENDIX E

(Filed April 20, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

### NOTICE OF APPEAL

Notice is hereby given that KENNETH M. REED, as Expectant Father and Next Friend of BABY REED, and MARK I. AUGHENBAUGH, as Expectant Father and Next Friend of BABY AUGHENBAUGH, proposed Intervenors as of right, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the MINUTE ORDER dated and entered in this action on the 5th day of March, 1990, and MEMORANDUM OPINION AND ORDER dated and entered in this action on the 22nd day of March, 1990.

Respectfully submitted,
/s/ Kenneth M. Reed
/s/ Mark I. Aughenbaugh

## APPENDIX F

(Filed April 20, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

### NOTICE OF APPEAL

Notice is hereby given that RITAELLEN M. MURPHY and PENNY R. GREENWOOD, members of the Plaintiff class consisting of all Illinois women of child-bearing age who desire or may desire an abortion sumetime in the future, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the MEMORANDUM OPINION AND ORDER dated and entered in this action on the 22nd day of March, 1990.

Respectfully submitted,
/s/ Ritaellen M. Murphy
/s/ Penny R. Greenwood

## APPENDIX G

(Filed May 18, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

### NOTICE OF APPEAL

Notice is hereby given that KENNETH M. REED, as Expectant Father and Next Friend of BABY REED, and MARK I. AUGHENBAUGH, as Expectant Father and Next Friend of BABY AUGHENBAUGH, proposed Intervenors as of right, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the MINUTE ORDER dated and entered in this action on the 5th day of March, 1990, MEMORANDUM OPINION AND ORDER dated and entered in this action on the 22nd day of March, 1990, and the minute order entered on the 19th day of April, 1990.

Respectfully submitted,
/s/ Kenneth M. Reed
/s/ Mark I. Aughenbaugh

## APPENDIX H

(Filed May 18, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

### NOTICE OF APPEAL

Notice is hereby given that RITAELLEN M. MURPHY and PENNY R. GREENWOOD, members of the Plaintiff class consisting of all Illinois women of child-bearing age who desire or may desire an abortion sumetime in the future, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the MEMORANDUM OPINION AND ORDER dated and entered in this action on the 22nd day of March, 1990, and the minute order entered on the 19th day of April, 1990.

Respectfully submitted,
/s/ Ritaellen M. Murphy
/s/ Penny R. Greenwood

## APPENDIX I

(Entered May 21, 1990)

IN THE UNITED STATES COURT OF APPPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

Nos. 90-1907 and 90-1908

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Illinois
No. 85 C 6011 - John A. Nordberg, Judge

### ORDER

The court, on its own motion, orders that these appeals are CONSOLIDATED for purposes of briefing and disposition.

Counsel for all parties are ordered to meet with the court's Senior Staff Attorney, Donald J. Wall, in the court's Auxiliary Courtroom at 9:00 a.m. on May 31, 1990 to discuss coordinating the briefing in order to avoid burdening the court with duplicative briefs.

Briefing on the merits shall be HELD IN ABEYANCE pending further court order of this court.

## APPENDIX J

(Entered June 7, 1990)

IN THE UNITED STATES COURT OF APPPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

Nos. 90-1907, 90-1908, 90-2122 and 90-2123

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Illinois
No. 85 C 6011 - John A. Nordberg, Judge

### ORDER

The court, on its own motion, orders that these appeals are CONSOLIDATED for purposes of briefing and disposition.

On May 31, 1990, the parties to these appeals had a conference with Donald J. Wall, Senior Staff Attorney for the Court; a telephone conference call with the same parties was held on June 4, 1990. As a result, the following matters were agreed to, and IT IS SO ORDERED:

The briefing schedule is as follows:

1. The appellants shall file their joint consolidated brief and required short appendix on or before July 9, 1990.

2. The appellees shall filed their respective consolidated briefs on or before August 15, 1990.

3. The appellants shall file their joint consolidated reply brief, if any, on or before September 5, 1990.

Counsel for appellees are encouraged to avoid unnecessary duplication by filing a joint brief or a joint appendix or by adopting parts of a co-appellee's brief. Duplicative briefing will be striken and may result in disciplinary sanctions against counsel.

NOTE: The parties are advised that Federal Rule of Appellate Procedure 26(c), which allows for three additional days after service by mail, does not apply when the due dates of briefs are set by order of this court. All briefs are due by the dates ordered.

## APPENDIX K

(Entered July 9, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

No. 85 C 6011 - Judge Nordberg

**ORDER**

Hearing held on Craig Greenwood's motion for leave to supplement the record on appeal. Per oral ruling, court denies motion to supplement the record.

## APPENDIX L

(Entered August 20, 1990)
(Corrected August 22, 1990)

IN THE UNITED STATES COURT OF APPPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

Nos. 90-1907, 90-1908, 90-2122 and 90-2123

RICHARD M. RAGSDALE, M.D., et al.,

Plaintiffs,

v.

BERNARD J. TURNOCK, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Illinois
No. 85 C 6011 - John A. Nordberg, Judge

### ORDER

Before Hon. WILLIAM J. BAUER, Chief Judge, Hon. WALTER J. CUMMINGS, Circuit Judge, Hon. HARLINGTON WOOD, JR., Circuit Judge, Hon. RICHARD D. CUDAHY, Circuit Judge, Hon. RICHARD A. POSNER, Circuit Judge, Hon. JOHN L. COFFEY, Circuit Judge, Hon. JOEL M. FLAUM, Circuit Judge, Hon. FRANK H. EASTERBROOK, Circuit Judge, Hon. DANIEL A. MANION, Circuit Judge, Hon. MICHAEL S. KANNE, Circuit Judge.

This matter comes before the court for its consideration of the "SUGGESTION FOR HEARING EN BANC" filed herein on August 1, 1990, by counsel for the appellants. Upon consideration by the active members of this court.*

IT IS ORDERED that the Suggestion for Hearing En Banc is DENIED.

*Judge Ripple took no part in this matter.

# APPENDIX M

## August 15, 1990 Amendments to Ambulatory Surgical Treatment Center Licensing Requirements, 77 Ill.Adm.Code, Ch. 1, Sec. 205

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITAL AND AMBULATORY CARE FACILITIES

PART 205
AMBULATORY SURGICAL TREATMENT CENTER LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section
205.110 Definitions
205.115 Incorporated and Referenced Materials
205.118 Conditions of Licensure
205.120 Application for Initial Licensure
205.125 Application for License Renewal
205.130 Approval of Surgical Procedures

SUBPART B: OWNERSHIP AND MANAGEMENT

Section
205.210 Ownership, Control and Management

SUBPART C: PERSONNEL



SUBPART D: EQUIPMENT, SUPPLIES, AND FACILITY MAINTENANCE



SUBPART E: GENERAL PATIENT CARE



SUBPART F: RECORDS AND REPORTS

SUBPART G: LIMITED PROCEDURE SPECIALTY CENTERS ~~ADDITIONAL REQUIREMENTS FOR FACILITIES IN WHICH OBSTETRICAL/GYNECOLOGICAL PROCEDURES ARE PERFORMED~~



SUBPART H: PROCEDURES FOR INVESTIGATION OF COMPLAINTS



SUBPART I: BUILDING DESIGN, CONSTRUCTION STANDARDS, AND PHYSICAL REQUIREMENTS

SUBPART J: MECHANICAL



SUBPART K: PLUMBING AND OTHER PIPING SYSTEMS



SUBPART L: ELECTRICAL

AUTHORITY: Implementing and authorized by the Ambulatory Surgical Treatment Center Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 157-8.1 et seq.)

SOURCE: Amended July 18, 1974; emergency amendment at 3 Ill. Reg. 10. p. 43. effective February 23, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 30, p. 371, effective July 23, 1979; amended at 5 Ill. Reg. 12756, effective November 4, 198l; amended at 6 Ill. Reg. 6220, 6225, and 6226, effective May 17, 1982; amended at 6 Ill. Reg. 10974, effective August 30, 1982; amended at 6 Ill. Reg. 13337, effective 0ctober 20. 1982; amended at 7 Ill. Reg. 7640, effective June 14, 1983; codified at 8 Ill. Reg. 9367; amended at 9 Ill. Reg. 12014, effective July 23. I985; amended at 10 Ill. Reg. 8806, effective June 1, 1986; amended at 10 Ill. Reg. 21906, effective January 15, 1987; amended at 11 Ill. Reg. 14786, effective October 1, 1987; amended at 12 Ill. Reg. 3743. effective February 15, 1988; amended at 12 Ill. Reg. 15573, effective October 1, 1988;

amended at 13 Ill. Reg. 16025. effective November 1, 1989; emergency amended at 14 Ill. Reg. 5596, effective March 26, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. ____, effective August 15, 1990.

NOTE: Capitalization denotes statutory language.

## SUBPART A: GENERAL

Section 205.120 Application for Initial Licensure

a) AN APPLICATION FOR LICENSE SHALL BE MADE TO THE DEPARTMENT ON FORMS PROVIDED BY THE DEPARTMENT (Section 5 of the Act). The application shall be submitted not less than sixty days prior to the date of intended operation and shall contain the information required under the Act and this Part.

b) The initial application shall include the following information:

1) The names and addresses of all persons who own the facility, any names under which any of these persons do business, and the type of ownership of the facility (for example, individual, partnership, corporation, or association). In addition, a corporation shall submit:

A) A copy of its certificate of incorporation.

B) A list of the title, name and address of each of its corporate officers.

C) A list of the name and address of each of its shareholders holding more than five percent of the shares.

2) The names and addresses of all persons under contract to manage or operate the facility.

3) The location of the facility.

4) Information regarding any conviction of the applicant, or if the applicant is a firm, partnership or association, of any of its members, or if the applicant is a corporation, of any of its officers or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude in the last five years.

5) The name, address, telephone number, education, experience, credentials and any professional licensure or certification of the following persons:

A) Administrator.

B) Medical Director.

C) Supervising Nurse.

6) A list of the medical staff including name, ~~address, telephone number,~~ specialty and license number.

7) A list of all staff personnel including name, ~~address, telephone number,~~ position, education. experience, and any professional licensure or certification.

8) A narrative description of the facility including but not limited to interviewing, examination. surgi-

cal and recovery room facilities.

9) A description of services to be provided by the facility including a list of surgical procedures to be performed subject to approval in accordance with the requirements of Section 205.130.

10) Documentation of compliance with Section 205.350 of this Part. ~~The name, address, education, experience and certification of the qualified medical technician who will perform required laboratory procedures or a copy of the written agreement with a laboratory, licensed by the Department, to perform the required laboratory procedures.~~

11) A copy of the transfer agreement with a licensed hospital within approximately 15 minutes travel time of the facility or other documentation demonstrating compliance with Section 205.540(d) ~~(e)~~ of this Part.

12) A copy of the organizational plan of the facility (see Section 205.220).

13) Schematic architectural plans.

14) Documentation of a permit as required by the Illinois Health Facilities Planning Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1151 et seq.)

15) Documentation of compliance with all applicable local building, utility, and safety codes.

c) THE APPLICATION SHALL BE SIGNED BY THE APPLICANT AND SHALL INCLUDE A VERIFICATION form acknowledging the application to be true and complete

and certifying that the applicant has knowledge of and understands the action required to comply with the Act and licensing requirements. THE FORM SHALL BE VERIFIED by a notary public. (Section 5 of the Act)

d) THE LICENSE APPLICATION SHALL BE ACCOMPANIED BY A LICENSE FEE OF $500. (Section 5 of the Act)

(Source: Amended at 14 Ill. Reg. _____, effective August 15, 1990)

Section 205.125 Application for License Renewal

a) Application for license renewal shall be submitted on forms provided by the Department. Application for license renewal shall be submitted to the Department not less than 30 days prior to the expiration date.

b) An application for license renewal shall include the following information:

1) The names and addresses of all persons who own the facility, any names under which any of these persons do business, and the type of ownership of the facility (for example, individual, partnership, corporation, or association). In addition, a corporation shall submit:

A) A list of the title, name and address of each of its corporate officers.

B) A list of the name and address of each of its shareholders holding more than five percent of tha shares.

2) The names and addresses of all persons under

contract to manage or operate the facility.

3) The location of the facility.

4) Information regarding any conviction of the applicant, or if the applicant is a firm, partnership or association, of any of its members, or if the applicant is a corporation, of any of its officers or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude during the previous year.

5) The name, address, and telephone number of the administrator, medical director, and supervising nurse. In addition. the education, experience, credentials and any professional licensure or certification of these individuals must also be submitted if this information was not submitted with the initial application or a prior renewal application or if this information has changed since the prior submission.

6) A list of the medical staff including name, ~~address, telephone number,~~ specialty and license number.

7) A list of all staff personnel including name, ~~address, telephone number,~~ position, education, experience, and any professional licensure or certification.

8) A list of surgical procedures being performed at the facility. Any new procedures which are included in this list must be identified and are subject to approval in accordance with the requirements of Section 205.130.

c) THE APPLICATION SHALL BE SIGNED BY THE

APPLICANT AND SHALL INCLUDE A VERIFICATION form acknowledging the application to be true and complete and certifying that the applicant has knowledge of and understands the action required to comply with the Act and licensing requirements. THE FORM SHALL BE VERIFIED by a notary public. (Section 5 of the Act)

d) The license renewal application shall be accompanied by A LICENSE RENEWAL FEE OF $300. (Section 6 of the Act)

(Source: Amended at 14 Ill. Reg. ____, effective August 15, 1990)

SUBPART C: PERSONNEL

Section 205.350 Laboratory Services. ~~Ambulatory Surgical Treatment Center~~

Each ambulatory surgical treatment center shall meet each ~~have one~~ of the following requirements:

a) Compliance with the requirements of the Department's rules Illinois Clinical Laboratories Code (77 Ill. Adm. Code 450). ~~A qualified medical technician who is certified by the American Society of Clinical Pathologists or is the holder of a letter, certificate, or record from the Bureau of Quality Assurance of the Department of Health, Education, and Welfare that he/she has passed the Federal Proficiency Examination Program for Clinical Laboratory Technologists, to perform required laboratory procedures.~~

b) Have a ~~A~~ written agreement with a laboratory, ~~licensed by the Department~~ under the Department's rules Illinois Clinical Laboratories Code (77 Ill. Adm. Code 450), to perform any required laboratory procedures which are not performed in the center.

(Source: Amended at 14 Ill. Reg. ____, effective August 15, 1990)

## SUBPART E: GENERAL PATIENT CARE

### Section 205.520 Preoperative Care

a) Where medical evaluation, examination, and referral are made from a private physician's office, hospital, or clinic, pertinent records thereof shall be available and made part of the patient's clinical record at the time the patient is registered and admitted to the ambulatory surgical treatment center.

b) A complete medical history shall be obtained and the physical examination shall be complete. A preanesthetic evaluation shall be completed specifically identifying any patient sensitivity or contraindications to anesthesia.

c) A hemoglobin or hematocrit and examination of the urine for sugar, protein, and acetone shall be performed ~~by a qualified laboratory technician~~ prior to the following procedures:

1) those performed with general anesthesia,

2) those performed with intravenous sedation,

3) those performed with spinal or epidural anesthesia,

4) those performed with any other specific anesthesia technique designated by the consulting committee, and

5) those performed to terminate pregnancy.

d) Prior to procedures performed to terminate a pregnancy, the physician shall establish the diagnosis of pregnancy by appropriate clinical evaluation and testing. In addition, the patient's blood Rh factor shall be determined.

e) ~~d)~~ A written statement indicating informed consent and a signed authorization by the patient for the performance of the specific surgical procedure shall be procured and made part of the patient's clinical record.

f) ~~e)~~ Surgical procedures shall not be performed on patient's having medical, surgical, or psychiatric conditions or complications as specified by the consulting committee in the facility's written policies.

g) ~~f)~~ Prior to admission to the facility for a surgical procedure the patient shall be informed of the following:

1) Patients who receive general anesthesia, intravenous sedation, spinal or epidural anesthesia, or any other specific anesthesia technique designated by the consulting committee, must not attempt to drive a motor vehicle immediately upon discharge from the facility.

2) Patients must make arrangements prior to admission for safe transportation from the facility upon discharge to return to home or to a similar environment.

(Source: Amended at 14 111. Reg. ____, effective August 15. 1990)

Section 205.540 Postoperative Care

a) Patients shall be observed in the facility for a period of

time sufficient to ensure that the patient is awake, physiologically stable, manifests no immediate postoperative complications, and is ready to return to home or to a similar environment. No patient shall be required to leave the center in less than one (1) hour following the procedures.

b) Rh factor sensitization prophylaxis shall be provided to all Rh negative patients following procedures performed to terminate pregnancy, in accordance with standard medical procedure.

c) ~~d)~~ Patients in whom a complication is known or suspected to have ~~occured~~ occurred during or after the performance of a surgical procedure, shall be informed of such condition and arrangements made for treatment of the complication. In the event of admission to an inpatient facility a summary of care given in the ambulatory surgical treatment center concerning the suspected complication shall accompany the patient.

d) ~~e)~~ To insure availability of follow-up care at a licensed hospital, the ambulatory surgical treatment center shall provide written documentation of one of the following:

1) A transfer agreement with a licensed hospital within approximately fifteen (15) minutes travel time of the facility.

2) A statement that the medical director of the facility has full admitting privileges at a licensed hospital within approximately fifteen (15) minutes travel time and that he/she will assume responsibility for all facility patients requiring such follow-up care.

3) A statement that each staff physician, dentist, or

podiatrist has admitting privileges in a licensed hospital within fifteen (15) minutes travel time of the facility.

e) ~~f)~~ Written instructions shall be issued to all patients in accordance with the standards approved by the consulting committee of the ambulatory surgical treatment center and shall include the following:

1) Symptoms of complications associated with procedures performed.

2) Limitations and/or restrictions of activities of the patient.

3) Specific telephone number to be used by the patient at anytime should any complication or question arise.

4) A date for follow-up or return visit after the performance of the surgical procedure which shall be scheduled within six weeks.

f) ~~e)~~ Patients shall be discharged only on the written signed order of a physician. The name, or relationship to the patient, of the person accompanying the patient upon discharge from the facility shall be noted in the patient's medical record.

g) Information on availa' ility of family planning services shall be provided, when desired by the patient, to all patients undergoing a pregnancy termination procedure. When, in the physician's opinion, it is in the best interests of the patient and with the patient's consent, family planning services may be initiated prior to the discharge of the patient.

(Source: Amended at 14 Ill.Reg. _____, effective August 15,
1990)

## SUBPART G: LIMITED PROCEDURE SPECIALTY CENTERS ~~ADDITIONAL REQUIREMENTS FOR FACILITIES IN WHICH OBSTETRICAL/GYNECOLOGICAL PROCEDURES ARE PERFORMED~~

Section 205.710 Pregnancy Termination Specialty Centers ~~Abortions~~

~~Abortions shall be provided to the public with the same standards of safety, effectiveness, and regard for patients rights as any other health service.~~

a) A facility will be considered a pregnancy termination specialty center if it meets each of the following conditions:

1) Procedures performed at the facility are limited to procedures to terminate pregnancy performed within 18 weeks assessed gestational age (beginning on the first day of the last menstrual period), and other gynecoligic procedures related to the termination of pregnancy. Assessed gestational age may be determined by patient history or by clinical assessment.

2) The center does not use general, epitural, or spinal anesthesia for any of the procedures performed. If intravenous sedation is used, mechanical ventilation devices and intubation equipment must be available on site.

3) The program narrative and policies of the facility are limited to the performance of procedures to ter-

minate pregnancy and other procedures related to the termination of pregnancy.

b) The following exceptions and modification of the requirements of this Part apply to pregnancy termination specialty centers.

Pregnancy termination specialty centers shall comply with each of the requirements of this Part, unless specifically excepted or modified by the provisions of this subsection.

1) The initial and renewal application need only include the name, address, and telephone number of all owners, administrators, and medical directors of the center [in lieu of compliance with Section 205.120(b)(5) through (7) and Section 205.125(b)(5) through (7)]. However, the other information required in these provisions shall be maintained at the center and be available for inspection by the Department. The information shall include the original or notarized copies of credentials of all licensed or certified personnel.

2) Compliance with Section 205.540(d) is not required, if the medical director or a physician practicing at the facility has a professional working relationship or agreement, maintained in writing at the facility and verifiable by the Department, with a physician who does have admitting or practice privileges at a licensed hospital within 15 minutes from the facility and who will assume responsibility for all facility patients requiring such follow-up care.

3) The administrative and public areas of the facility are not required to comply with Section 205.1350.

4) A separate examination room is not required; however, adequate space shall be provided to accommodate any equipment necessary for examination, to perform examinations safely, and to allow unobstructed ingress and egress to and from the examination area [in lieu of compliance with Section 205.1360(a)(1)].

5) Each room in which procedures to terminate pregnancy are performed shall be at least 120 square feet in size with a minimum dimension of at least 10 least. Exceptions will be made when the center demonstrates that the room size is adequate to accommodate the equipment required for the procedures, to facilitate the performance of the procedures safely, and to protect the patients and staff in the event of fire or other emergency [in lieu of compliance with Section 205.1360(b)(1)].

6) A communications system between the control station and each procedure room is not required [in lieu of compliance with Section 205.1360(b)(2)].

7) Not less than three recovery beds or lounge chairs shall be required for each procedure room. However, if the facility's narrative program provides that no more than two procedures per hour will be performed per procedure room, then only two recovery beds or lounger chairs will be required for each procedure room. A minmum of three feet shall be provided between each recovery bed or lounge chair and an unobstructed passageway of a minimum of four feet shall be provided at one end of each bed or chair [in lieu of compliance with Section 205.1360(c)(2) and (c)(7)].

8) The recovery area is not required to include a

tion, or storage space for supplies and equipment [in lieu of compliance with Section 205.1360(c)(3)]. However, the facility shall provide for direct visual supervision of the recovery area for all patients.

9) A toilet for patient use must be in the recovery area, or in a location which does not require patients to enter public areas of other patient care areas in order to gain access from the recovery area. A gray diverter valve is not required on the toilet in the recovery area, if a means of fluid waste disposal is provided at another location within the center [in lieu of compliance with Sections 205.1360(c)(4) and 205.1370(f)].

10) A control station for the operating suite is not required [in lieu of compliance with Section 205.1370(a)].

11) A scrub station is not required outside the procedure room, if the procedure room contains a sink with handwashing capabilities [in lieu of compliance with Section 205.1370(d)].

12) A separate soiled workroom is not required; however, facilities shall be provided for closed clean storage which prevents contamination by soiled materials, and for storage and handling of soiled linens and other soiled materials. These procedures shall be described in the center's narrative program [in lieu of compliance with Section 205.1370(e) and (g)].

13) Anesthesia and medical gas storage facilities are not required [in lieu of compliance with Section 205.1370(h) and (i)].

14) A one-way traffic pattern through staff change areas is not required, but space shall be provided for any changing or gowning which is required by the specific procedures which are being performed in accordance with the center's narrative program [in lieu of compliance with Section 205.1370(k)].

15) A change area for patients is not required [in lieu of compliance with Section 205.1370(l)].

16) A separate janitor's closet for the surgical suite is not required, if the janitor's closet for the center is centrally located and contains space for the storage of supplies needed for cleaning both the surgical and non-surgical areas of the center [in lieu of compliance with Section 205.1370(n)].

17) A minimum corrider width of five feet and a minimum door width of three feet shall be provided for all corriders and for all doors which are accessible to the public or through which patients may need to be transported in an emergency [in lieu of compliance with Section 205.1400(a)(1), (b)(2), and (b)(3)].

18) The requirements of Section 205.1400(d) for flush thresholds and expansion joint covers do not apply.

19) Ceilings in procedure and recovery rooms must be cleanable, but are not required to be washable [in lieu of compliance with Section 205.1400(n)(1)].

20) The requirements for elevators in Sejction 205.1410(d)(1) do not apply.

21) Ventilation, air change, and air filter require-

ments do not apply; however, temperature shall be maintained in the facility between 68 and 80 degrees Fahrenheit [in lieu of compliance with Section 205.1540 and Table A].

22) The requirement for one duplex receptacle for each wall does not apply [in lieu of compliance with Section 205.1750(b)].

(Source: Section repealed, new Section adopted at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.720 Personnel (Repealed)

~~At least one registered professional nurse with postgraduate education or experience in obstetrical or gynecological nursing shall supervise and direct the nursing personnel and care of patients having obstetrical procedures.~~

~~AGENCY NOTE: Procedures involving the pregnant uterus are subject to particular complications and postopetrative care requires a special knowledge on the part of hursing staff.~~

(Source: Repealed at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.730 General Patient Care (Repealed)

~~a) Examination~~

~~1) Prior to obstetrical procedures blood Rh factor shall be determined by a qualified laboratory technician for every patient.~~

~~2) The physician performing an abortion procedure~~

~~shall establish the diagnosis of pregnancy by appropriate clinical evaluation and testing prior to performing an abortion procedure.~~

~~3) Time shall be allowed between the initial examination and termination of pregnancy to permit the reporting to and reviewing of all laboratory tests with the patient by the facility physician.~~

~~b) Counseling~~

~~1) Counseling shall be provided following disclosure to the patient of the diagnosis of pregnancy, and prior to performance of any surgical procedure. It shall be done individually and in a room designated for such use which shall not be the procedure room.~~

~~2) All facilities shall provide orientation training for counselors and insure that each counselor is qualified to:~~

~~A) Counseling shall be done by a person qualified to:~~

~~i) discuss alternatives for dealing with a unwanted pregnancy;~~

~~ii) describe the procedures used in the facility;~~

~~iii) explain the risks and possible complications of each procedure;~~

~~iv) provide contraception information.~~

~~B) Demonstration of such counseling qualifi-~~

~~cations shall be required by the Department.~~

~~C) Documentation of orientation training shall be required by the Department.~~

~~D) Counselors shall have no financial interest in the patient's decision.~~

~~3) Counseling shall include a discussion of alternatives, description of the procedure to be performed, explanation of risks and possible complications. Contraceptive information may be provided postoperatively. Group counseling may be provided in addition to individual counseling. The patient's clinical record shall include documentation of the counseling reqeived.~~

~~AGENCY NOTE: In the opinion of the Ambulatory Surgical Treatment Center Licensing Board, the patient should make a decision concerning the procedure in an atmosphere free from coercion. Consequently, the Board believes this is best accomplished in a room separate and apart from the procedure room. The Board believes that it is difficult to reach a truly voluntary decision while the patient is undressed and on the proceure table.~~

(Source: Repealed at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.740 Preoperative Requirements (Repealed)

~~Abortions may be performed in an ambulatory surgical treatment center on only those patients with gestation up to and including 12 weeks commencing with ovulation rather than computed on the basis of~~

~~the menstrual cycle, as determined by the physician, if the patient's medical condition permits. Abortions shall not be performed in an Ambulatory Surgical Treatment Center on those patients whose gestation exceeds 12 weeks.~~

(Source: Repealed at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.750 Postoperative Requirements (Repealed)

~~a) Each obstrical/gynecological service shall provided Rh factor sensitization prophylaxis to all Rh negative patients according to standard medical procedures.~~

~~b) Information on availability of family planning services shall be provided, when desired by the patient. When, in the physician's opinion, it is in the best interest of the patient and with the patient's consent, family planning services may be initiated prior to the discharge of the patient.~~

(Source: Repealed at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.760 Reports (Repealed)

~~a) A report of each abortion procedure performed in an ambulatory surgical treatment center shall be made to the Department on forms provided by it. These reports shall be submitted not later that ten (10) days following the month in which the abortion was performed. Reports shall be submitted on procedures performed whether or not the patient was pregnant.~~

~~b) Reports shall not be filled out in such a manner or at such a time as to avoid accurate reporting of complication.~~

~~c) If the facility becomes aware of a complication following the submission of the original report, then a supplemental report shall be submitted to the Department.~~

(Source: Repealed at 14 Ill.Reg. _____, effective August 15, 1990)

Section 205.1380 Diagnostic Facilities

~~If the pre-admission evaluation tests are to be performed within the facility, the following services shall be provided.~~

a) Radiographic suite, if radiography is provided in the center, shall contain the following:

1) film processing area

2) viewing and administration area

3) film storage facilities

4) toilet room with handwashing facilities, directly accessible from each fluoroscopy room without entering the general corrider area.

5) dressing area with convenient access to toilets.

b) If laboratory testing is performed in the center which required a permit or license under the Department's rules Illinois Clinical Laboratories Code (77 Ill.Adm.Code 450), the laboratory area of the center ~~Laboratory suite~~ shall contain the following minimum facilities:

1) Laboratory work counter with sink and vacuum, and electric services.

2) Lavatory or counter sink equipped for handwashing.

3) Storage cabinet or closet for any necessary laboratory supplies and equipment. This storage area may be combined with other storage areas in the center.

~~4) Specimen collection facilities equipped with a toilet and lavatory.~~

4) ~~5)~~ Blood collection facilities shall have space for a chair and work counter.

(Source: Amended at 14 Ill.Reg. _____, effective August 15, 1990)